

# Notice of Allowability

Application No.

10/699,318

Examiner

Matthew Bradley

Applicant(s)

COCHRAN ET AL.

Art Unit

2187

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment filed 4 October 2007.
2. ☒ The allowed claim(s) is/are 44-58.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
  1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

## DETAILED ACTION

### *Response to Amendment*

This Office Action has been issued in response to amendment filed 4 October 2007. Applicant's arguments have been carefully and fully considered and are persuasive.

### *Claim Status*

Claims 44-58 remain pending and are ready for examination.

### *Allowable Subject Matter*

Claims **44-58** are allowed.

The following is an Examiner's statement of reasons for allowance: the prior art made of record fails to teach the combination including the limitation of:

(Claim **44**) "...initiating the remote copy process to copy data from a first logical unit in the first storage cell to a copy of the first logical unit in the second storage cell over the storage network, wherein the remote copy process copies data using an initial native block size; and performing the spectrum sweep throughput probe during the remote copy process when the characteristic of the remote copy process satisfies at least one of the plurality of parameters.";

(Claim **49**) "...initiating the remote copy process to copy data from a first logical unit in the first storage cell to a copy of the first logical unit in the second storage cell over the storage network, wherein the remote copy process copies data using an initial native block size; and performing the spectrum sweep throughput probe during the

remote copy process when the characteristic of the remote copy process satisfies at least one of the plurality of parameters.”;

(Claim 54) “...initiating the remote copy process to copy data from a first logical unit in the first storage cell to a copy of the first logical unit in the second storage cell over the storage network, wherein the remote copy process copies data using an initial native block size; and performing the spectrum sweep throughput probe during the remote copy process when the characteristic of the remote copy process satisfies at least one of the plurality of parameters.”;

Support for such reasons of allowance and the limitations therein can be found in Applicant's specification starting at least in paragraph 0042. Further, the Examiner wishes to reference paragraph 0036 for explicit support and definition of the language "spectrum sweep throughput probe" which is found in the limitations noted *supra*.

As dependent claims **45-48**, **50-53**, and **55-58** depend from an allowable base claim; they are at least allowable for the same reasons as noted *supra*.

The prior art made of record, neither anticipates nor renders obvious the above-recited combinations for at least the reasons specified and as shown in Applicant's Arguments filed 4 October 2007.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew Bradley whose telephone number is (571) 272-8575. The examiner can normally be reached on 6:30-3:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald A. Sparks can be reached on (571) 272-4201. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

DAS/mb 

  
**DONALD SPARKS**  
**SUPERVISORY PATENT EXAMINER**